

January 2, 2019

The Honorable Jesse M. Furman
Thurgood Marshall U.S. Courthouse
United States District Court for the Southern District of New York
40 Centre Street, Room 2202
New York, NY 10007

RE: Application of Standing Order M10-468 to *State of New York, et al. v. U.S. Dep't of Commerce, et al.*, 18-CV-2921 (JMF).

Dear Judge Furman,

On January 2, 2019, Chief Judge McMahon's December 27, 2018 Standing Order staying certain civil cases involving the United States or its agencies was docketed on the docket of this action, with instructions to the U.S. Attorney's Office to notify the Court upon the restoration of Department of Justice funding. *See* Docket No. 569. Plaintiffs write pursuant to this Court's Rule 1.A to communicate our understanding that the Chief Judge's Standing Order does not apply to stay these consolidated cases.

Chief Judge McMahon's order applies to "all civil cases (other than civil forfeiture cases) in which the United States Attorney's Office for the Southern District of New York has appeared as counsel of record for the United States." *Id.* In this case, the United States Attorney's Office expressly withdrew from representing Defendants. *See* Docket No. 227 (notice of withdrawal of counsel); Docket No. 233 (order granting withdrawal of counsel); *see also New York v. U.S. Dep't of Commerce*, No. 18-cv-2921, 2018 WL 5791968, at *2 n.2 (S.D.N.Y. Nov. 5, 2018) (amended opinion denying stay and noting the withdrawal of the U.S. Attorney's Office from their representation of Defendants in these consolidated cases). The Standing Order therefore does not apply to this action.

Plaintiffs also note that in light of the lapse in appropriations, Defendants sought a stay of proceedings in the four other lawsuits challenging the citizenship question that are set for trial this month, and the courts in those cases denied Defendants' motions. *See* Order Denying Stay Due to Lapse of Appropriations, *California v. Ross*, No. 3:18-cv-1865-RS, Docket No. 122 (N.D. Cal. Dec. 26, 2018); Order Denying Motion to Stay, *La Unión del Pueblo Entero v. Ross*, No. 8:18-cv-1570-GJH, Docket No. 95 (D. Md. Dec. 28, 2018). Defendants have not sought to stay proceedings in this Court based on the lapse in appropriations.

Respectfully submitted,

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